IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 27TH NOVEMBER 2007 / 6TH AGRAHAYANA 1929

CRP.No. 2579 of 2000(E)

AGAINST THE ORDER DATED 09/06/2000 IN IA.616/1999 IN OS.217/1998 of MUNSIFF COURT, KARUNAGAPPALLY

REVN. PETITIONER: PETITIONER: PLAINTIFF:

N.PRABHAKARAN, EDAYILE VEEDU,
ADINADU NORTHMURI,
KULASEKHARAPURAM VILLAGE.

BY ADV. SRI.A.SHAFEEK

RESPONDENT: RESPONDENT: DEFENDANT:

SAJIKUMAR, S/O.SANKARA PILLAI,
KOPRAPURAYIL VEETTIL, MALIBHAGOM MURI,
CHAVARA SOUTH, THEKKUMBHAGAM VILLAGE,
KOLLAM.

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 27/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T.SANKARAN, J.

C.R.P. NO. 2579 OF 2000

Dated this the 27th day of November, 2007

O R D E R

The plaintiff in O.S.No.217 of 1998, on the file of the Court of the Munsiff of Karunagappally, is the revision petitioner. The suit was listed for trial. On the ground that the plaintiff did not appear when the suit was called for hearing, the trial court dismissed the suit for default.

2. I.A.No.616 of 1999 was filed by the petitioner to get the suit restored. In the affidavit accompanying the application, the petitioner stated that when the case was called for hearing, the petitioner, the defendant as well as the counsel for both parties were present. Then the case was passed over for some time and thereafter, it was dismissed for default. It is also stated that the petitioner/plaintiff was present in Court and, therefore, dismissal of the suit for default was uncalled for.

3. An order dismissing an application under Order IX Rule 9 of the Code of Civil Procedure is appealable under Order XLIII Rule 1(c) of the Code of Civil Procedure. Hence, this Civil Revision Petition is not maintainable.

4. Learned counsel for the petitioner submitted that the Revision was filed in 2000 and if, at this stage, it is dismissed on the ground that

appeal is the remedy, even if the revision petitioner files an appeal that would be dismissed on the ground of delay. The Civil Revision Petition was filed on 2.8.2000. It is being dismissed today. The petitioner is entitled to apply before the Appellate Court, in case he files an appeal, to get this period excluded under Section 14 of the Limitation Act.

With this observation, the Civil Revision Petition is dismissed as not maintainable.

Issue certified copy of the order today itself.

(K.T.SANKARAN)
Judge

ahz/

K.T.SANKARAN, J.

C.R.P.NO.2579 OF 2000 E

O R D E R

27th November, 2007